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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,549

12/04/2003

James Hammer

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8784

24197

7590

05/12/2006

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EXAMINER

ROBERTSON, TIARA S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,549	<b>Applicant(s)</b> HAMMER, JAMES	
	<b>Examiner</b> Tiara S. Robertson	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-35 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/12/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Attached Drawing</u> .                 |

## DETAILED ACTION

### *Claim Objections*

1. Claim 32 is objected to because of the following informalities: Claim should read "...forming a portion of at least one...". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-3, 5-7, 9-19, and 21-25 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,350,256 to Hammer. See attached drawing.

Regarding claims 1-3, Hammer discloses, in figure 1, a retaining wall comprising a first set of one or more courses (14), at least a portion of each comprising a plurality of unitary blocks placed side-by-side with respect to each other (24); and a second set of one or more courses, at least a portion of each comprising a plurality of block assemblies placed side-by-side (24, 32, and 36), each block assembly comprising at least two interconnected block components; where the first set of one or more is located above or below the second set of one or more courses. Where all of the courses overlay one another.

Regarding claims 5 and 6, Hammer discloses a retaining wall as described in claim 1 where each block assembly comprises a face block having a front surface exposed in the front surface of the wall (24); at least one anchor block (36); and at least one elongated trunk block extending between the face block and the anchor block, the trunk block having a first end portion connected to the face block and a second end portion connected to the anchor block (32). Where the face block of each assembly has a dovetail connector element that interconnects with a complementary dovetail connector element of the first end portion of a respective trunk block, and the anchor block of each block assembly has a dovetail connector element that interconnects with a complementary dovetail connector element of the second end portion of a respective trunk block (Col. 4, lines 4-20).

Regarding claim 7, Hammer discloses a retaining wall as described in claim 5 where each block assembly comprises a first anchor block connected to the first trunk block opposite the face block; a second trunk block connected to and extending rearwardly from the first anchor block; and a second anchor block connected to the second trunk block opposite the first anchor block (40).

Regarding claim 9, Hammer discloses a retaining wall as described in claim 1 where the unitary blocks are coupled to the block assemblies of a vertical adjacent course with block-connecting elements (Col. 4, lines 33-37). Where the first set of one or more courses comprises a first and second, upper and lower course of unitary blocks; and where the second set of one or more courses comprises a first and second, upper and lower course of block assemblies.

Regarding claims 10-14, Hammer discloses a retaining wall as described in claim 1, where the first set of one or more courses comprises a first and second, upper and lower course of unitary blocks; and where the second set of one or more courses comprises a first and second, upper and lower course of block assemblies. Where each unitary block of the second course of unitary blocks is positioned on two unitary blocks of the first course of unitary blocks; and each block assembly of the second course of block assemblies is positioned on two block assemblies of the first course of block assemblies; and where each unitary block of the second course of unitary blocks is connected to two unitary blocks of the first course of unitary blocks and each block assembly of the second course of block assemblies is connected to two block assemblies of the first course of block assemblies by means of an alignment pin inserted through openings in the unitary block structure (Col. 4, lines 33-37).

Regarding claims 15-16, Hammer discloses a retaining wall as described in claim 1, where chambers containing fill material are defined between horizontally adjacent block assemblies and unitary blocks (44).

Regarding claims 17-19 and 21-22, Hammer discloses a retaining wall comprising a plurality of courses, at least a portion of each comprising a plurality of unitary blocks placed side-by-side with respect to each other in respective courses (24); and a plurality of courses, at least a portion of each comprising a plurality of block assemblies placed side-by-side with respect to each other in respective courses, each block assembly comprising at least a first block and a second block connected to the first block and extending rearwardly therefrom; wherein courses including said unitary

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blocks are located above and below courses including said block assemblies. Where each unitary block has a depth that is less than the depth of the block assemblies; and where each block assembly comprises a generally I-shaped assembly having a front block, an elongated trunk block connected to the front block and extending rearwardly and generally perpendicularly therefrom, and a rear block connected to the trunk block opposite the front block, the rear block being disposed in a generally parallel relationship with respect to the front block.

Regarding claims 23-25, Hammer discloses a retaining wall, as describe in claim 17, where each course is set back from an adjacent lower course to form a sloped wall face (Col. 3, lines 47-49), where each unitary block has a width and height that is equal to the width and height of the block assemblies.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 20, and 26-35 rejected under 35 U.S.C. 103(a) as being unpatentable over Hammer in view of applicant's admission of prior art.

Regarding claims 4 and 20, Hammer discloses a retaining wall as previously rejected in claims 1 and 17, where the first set of one or more courses comprises first and second courses of unitary blocks. Hammer does not disclose that the wall further

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comprises a reinforcing tie-back sheet positioned between the first and second courses and extending rearwardly into fill material retained behind the wall. The applicant admits that it is well known in the art to use a reinforcing horizontal tie-back sheets located between adjacent layers of blocks, and extended rearwardly into an excavated area to be backfilled for retaining the wall (pg. 1, lines 19-22). Therefore it would have been obvious to one skilled in the art to position a tie-back between the first and second courses and extending rearwardly into fill material retained behind the wall. One would be motivated to make such a modification to allow for taller walls to be constructed.

Regarding claim 26, Hammer discloses a retaining wall comprising a plurality of single blocks arranged side-by-side; a plurality of different course, a portion of each comprising a plurality of block assemblies arranged side-by-side, each block assembly comprising a front block, at least one elongated trunk block connected to and extending rearwardly from the front block, and at least one anchor block connected to the trunk block opposite the front block; and wherein the courses including the single blocks are located above or below the courses including the block assemblies. The applicant admits that it is well known in the art to use horizontal tie-back sheets located between adjacent layers of blocks, and extended rearwardly into an excavated area to be backfilled for retaining the wall (pg. 1, lines 19-22). Therefore it would have been obvious to one skilled in the art to position a tie-back between the first and second courses and extending rearwardly into fill material retained behind the wall. One would be motivated to make such a modification to allow for taller walls to be constructed.

Regarding claims 27-28, Hammer discloses a retaining wall, as described in

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claim 26, where the trunk block of each block assembly is connected at one end thereof to a respective front block with a dovetail connection and at an opposite end thereof to a respective anchor block with a dovetail connection. Wherein chambers filled with fill material are defined between adjacent block assemblies in each course (12).

Regarding claims 29-32 and 34-35, Hammer teaches a method of constructing a retaining wall comprising the steps of forming a portion of a plurality of courses from a plurality of single blocks; and forming a portion of at least one different course from a plurality of block assemblies, each block assembly having at least two interlocking block components; where the course that includes the single blocks is constructed on top of and below the course that includes the block assemblies; where forming a portion of at least one course from a plurality of block assemblies comprises forming portions of a plurality of courses from block assemblies and where forming a portion of at least one course from a plurality of block assemblies comprises assembling the interlocking block components to form the block assemblies. Although Hammer does not specifically disclose a method of constructing a retaining wall, it would be inherent to one having ordinary skill in the art to construct a retaining wall using the method, as described, based on the claimed invention of Hammer.

Regarding claim 33, Hammer as modified teaches the basic method as described in claim 32, further comprising positioning a tie-back sheet extending rearwardly into fill material behind the wall. Although Hammer does not specifically disclose a method of constructing a retaining wall, it would be inherent to one having



ordinary skill in the art to construct a retaining wall using the method, as described, based on the claimed invention of Hammer.

***Allowable Subject Matter***

1. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

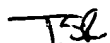
***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tiara S. Robertson whose telephone number is 571-272-2944. The examiner can normally be reached on Monday-Thursday, 7-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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TSR

05/09/2006



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